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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on November 17, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-2003-16468-5

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: Aerolineas de Baleares, S.A. (AeBal)

Date Filed: November 4, 2003

Relief requested: Exemption from 49 U.S.C. § 41301 and statement of authorization under 14 CFR Part 212 to the extent necessary to permit AeBal to wet lease aircraft to Spanair, S.A., a foreign air carrier of Spain, for use by Spanair on Spanair flights between Madrid, Spain, on the one hand, and Barcelona, Malaga, and Palma de Mallorca, Spain, on the other hand (limited to the carriage of US Airways' and Spanair's U.S.-Spain traffic).¹

If renewal, date and citation of last action: New authority

Applicant representative: John P. Schmitz & Carl J. Summers (202) 263-3000

DOT Analyst: Gordon H. Bingham (202) 366-2404

Responsive pleadings: None filed.

DISPOSITION

Action: Approved

Action date: November 17, 2003

(We acted on this application without awaiting expiration of the 15-day answer period with the consent of all parties served.)

Effective dates of the exemption and statement of authorization granted: November 17, 2003-November 17, 2004²

Basis for approval (bilateral agreement/reciprocity): Reciprocity with Spain

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions attached

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that AeBal is financially and operationally qualified to perform the services authorized above. However, we are unable to conclude that AeBal is substantially owned and effectively controlled by citizens of Spain. In that regard, we note that AeBal, a commonly owned affiliate of Spanair, is 51% owned by Spanair Holding and 49% by Scandinavian Airlines System.³ Three of AeBal's six directors are citizens of Spain, and all of its key management positions are held by citizens of Spain. In spite of the fact that we are unable to find that AeBal is substantially owned and effectively controlled by homeland nationals, we find it appropriate to waive our ownership and control requirements. The carrier is properly licensed by the Government of Spain to perform the proposed services, and there is no evidence on the record which would suggest that the ownership of the carrier would be inimical to U.S. aviation policy or interests.

¹ On November 17, 2003, we granted a related request of US Airways and Spanair for statements of authorization to engage in code-share services in the U.S.-Spain market (Docket OST-2003-16219).

² We note that AeBal sought authority for a two year period. However, as is our usual practice in conferring exemption authority in the circumstances presented, we are limiting the term of authority to one year. AeBal may, of course, seek renewal of this authority in accordance with the Department's regulations.

³ Spanair Holding is 51% owned by TEINVER S.A., a Spanish corporation and 49% by Scandinavian Airlines System.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

Foreign Carrier Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.